



To enrich lives through effective and caring service



Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

February 7, 2008

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director *Stan Wisniewski*

SUBJECT: ITEM 4b – APPROVAL OF OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT – PARCEL 21 (HOLIDAY HARBOR) - MARINA DEL REY

Item 4b on your agenda pertains to an option to extend the Parcel 21 (Holiday Harbor) lease, in order to facilitate development of a new marina and a parking structure for 447 cars that also contains 29,000 square feet of commercial space. For your convenience, we have attached a copy of the Board letter that explains the details of the proposed transaction, including the need for the lessee to pursue a Local Coastal Program (LCP) amendment to relocate 94 public parking spaces from Parcel OT to Parcel 21, as well as a development permit modification to transfer the yacht club and marine commercial uses from Parcel 20 to Parcel 21. The exhibits to the Board letter include a copy of the proposed Option to Amend Lease Agreement and a copy of the proposed Amended and Restated Lease Agreement.

Additionally, as requested by your Commission, the lessee has submitted the attached set of plans showing the existing dock layout and the proposed new docks, as well as a drawing, Sheet 4, superimposing the proposed docks over the existing layout. Last month, our submission indicated that the new anchorage would have 87 slips, a reduction of 95 from the current 182 slips. However, the lessee has submitted a new dock plan reflecting that the new anchorage will have 103 slips, for a reduction of 79 slips. [Note that the lessee's calculation, as illustrated on the proposed plans, indicates the existing anchorage to consist of 148 slips, not 182 as we have presented, based on lessee's belief that each double slip should be counted as one slip rather than two slips.] In order to design this new configuration, the lessee has eliminated all slips considered to be large slips, including the existing ten 40-foot slips, opting instead to dedicate the entire marina to slips of 35 feet or less. The reduction of 79 slips is due to several factors, including: 1) having to meet new ADA dock standards; 2) the need to include a pump-out station on site; 3) correction of an incursion of the current

dock into the County's waters outside of the leased area; 4) elimination of outdated double wide slips; and 5) an increase in the average slip size of this marina.

While we recognize that the California Coastal Commission (CCC) at its January meeting included a recommendation as part of its periodic review of the Marina LCP to oppose any reduction in the number of slips sized under 34 feet, we are recommending approval of the option and lease extension agreement for Parcel 21 in order to conclude the proprietary phase of the development and allow the project to proceed to the regulatory phase, at which time the regulatory agencies including the CCC will evaluate the project, including the dock plan, on its merits.

Your Commission's endorsement of the Chief Executive Officer's recommendation to the Board of Supervisors as contained in the attached letter is requested.

SW:KS:SHK:PW:ks
Attachments

Printed On: Feb 04, 2008 - 1:27pm

| | |
|-----|-----------------------------|
| T-1 | TITLE SHEET |
| L-1 | EXISTING LAYOUT |
| L-2 | PROPOSED LAYOUT |
| L-3 | EXISTING VS PROPOSED LAYOUT |

PROJECT ADDRESS:

CLIENT:

ENGINEER:

Copy of Holiday Marine Current 2-6-07/1.07/9

[illegible]

B L E E W A T F R
DESIGN (GROUP)
Panathier und Engineering Services
for Marina and Waterfront Resorts

2500 Van Cliburn Parkway, Suite 200
San Pedro, CA 90731
Tel: 310 548 3132
Fax: 310 548 1924



| | |
|----------|----------|
| AS NOTED | 02-06-08 |
| 2145-A | |
| T-1 | |
| 1 of 4 | |

508' 2.3

3,800

4,000

4,200

4,400

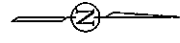
| PROPOSED DOCK LAYOUT SLIP COUNT | | | |
|---------------------------------|----------|-------------|--------|
| Slip Length | Quantity | Linear Feet | 2 |
| 35' | 8 | 190 | 5.83 |
| 30' | 38 | 1170 | 27.88 |
| 25' | 38 | 1170 | 27.88 |
| 20' | 102 | 2040 | 100.00 |
| Average | 315 | | |

(5) - INDICATES SOME SLIPS ARE SHIP BOAT SLIPS
PROPOSED: 2,997.00 + 4,144.00 + 4,144.00 + 12,745.74
DOCK AREA = 23,930.74 SQ.FT.

P.S. NOTE:
TOTAL NO. OF PILES = 79

DOCK 3500 DOCK 3300 DOCK 3100 DOCK 2900 DOCK 2700 DOCK 2500

N 5,400



PARCEL LINE

ADA GROUP

N 5,200

ADA GROUP

PANAY

WAY

PANAY

PROPOSED DOCK LAYOUT
SCALE: 1"=20'

IMPROVEMENTS FOR HOLIDAY MARINA
PARCEL 21-MARINA DEL REY, CA

| | |
|-------------|---|
| STATUS | X |
| PROJECT | |
| DATE | 02-06-08 |
| BY | 2145-A |
| CHKD | L-2 |
| APP'D | 3 of 4 |
| DESIGNED BY | 2500 Via Conchita, Marina del Rey, CA 90291 |
| PHONE | 310 548 3132 |
| FAX | 310 548 3924 |
| EMAIL | info@billewatt.com |
| WEBSITE | www.billewatt.com |
| PROJECT NO. | 2145-A |
| DATE | 02-06-08 |
| BY | 2145-A |
| CHKD | L-2 |
| APP'D | 3 of 4 |

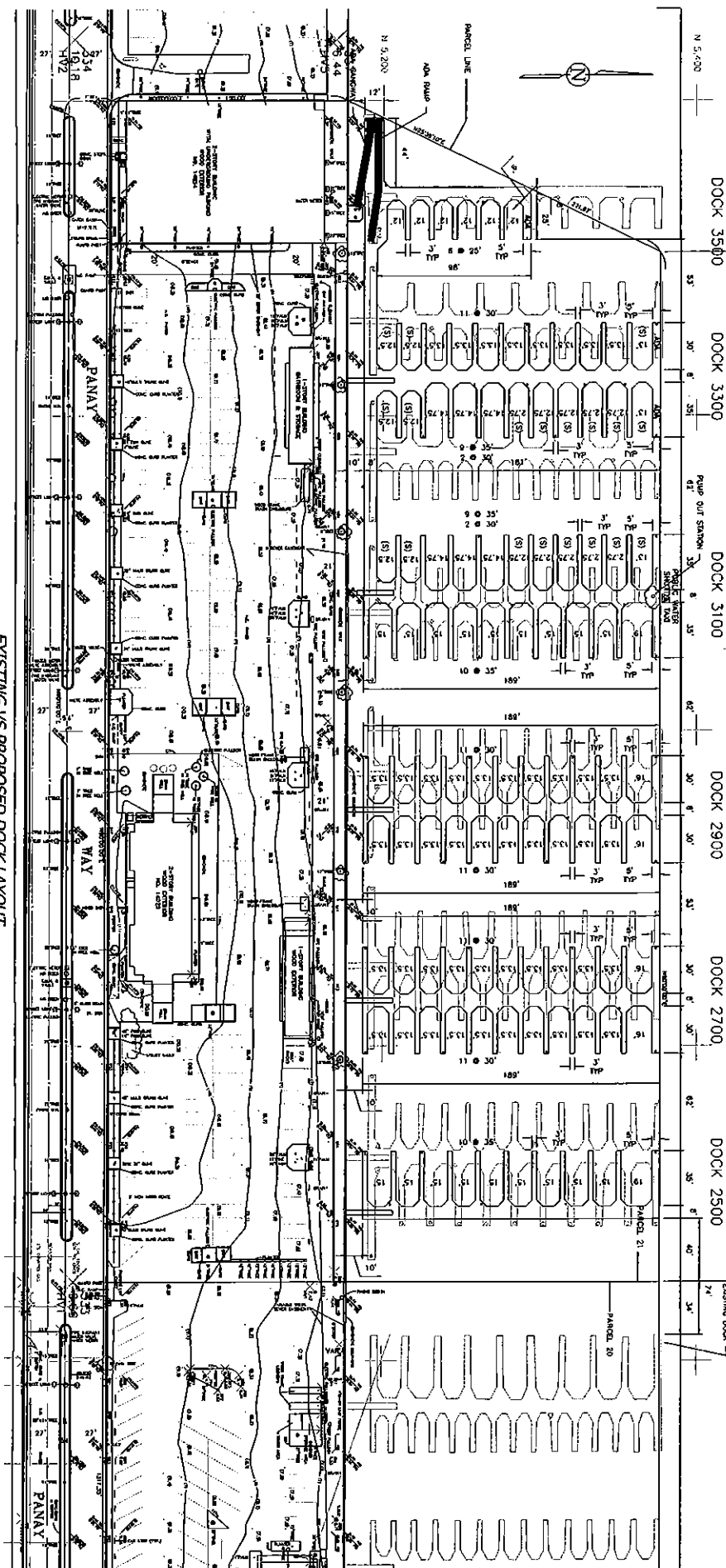
STATUS

| | | | |
|-------------|--|---|--|
| PROJECT | | IMPROVEMENTS FOR HOLIDAY MARINA PARCEL 21-MARINA DEL REY, CA | |
| DATE | | 2/20/08 | |
| DRAWN BY | | JL | |
| CHECKED BY | | JL | |
| APPROVED BY | | JL | |
| PROJECT NO. | | 21-001 | |
| SHEET NO. | | 1-3 | |
| SHEET TOTAL | | 4 of 4 | |
| DATE NOTED | | 02-06-08 | |
| NOTED BY | | 21-05-A | |
| PROJECT NO. | | 21-001 | |
| SHEET NO. | | 1-3 | |
| SHEET TOTAL | | 4 of 4 | |

EXISTING VS PROPOSED DOCK LAYOUT

SCALE 1"=50'

PROPOSED VS EXISTING
DOCK LAYOUT



EXISTING DOCK LAYOUT SLIP COUNT

| Slip Length | Quantity | Linear Feet | % |
|-------------|----------|-------------|-------|
| 20' | 34 | 680 | 23.5 |
| 30' | 54 | 1,620 | 38.5 |
| 40' | 30 | 1,200 | 23.5 |
| 50' | 10 | 500 | 8.2 |
| 60' | 0 | 0 | 0 |
| 70' | 0 | 0 | 0 |
| 80' | 0 | 0 | 0 |
| TOTAL | 128 | 2,900 | 100.0 |
| Average | | 22.67 | |

PROPOSED DOCK LAYOUT SLIP COUNT

| Slip Length | Quantity | Linear Feet | % |
|-------------|----------|-------------|--------|
| 20' | 6 | 120 | 5.83 |
| 30' | 59 | 1,770 | 57.28 |
| 40' | 30 | 1,200 | 26.85 |
| 50' | 10 | 500 | 10.00 |
| 60' | 0 | 0 | 0 |
| 70' | 0 | 0 | 0 |
| 80' | 0 | 0 | 0 |
| TOTAL | 105 | 3,590 | 100.00 |
| Average | | 34.20 | |

NOTE: INDICATES DOUBLE BEAM SLIPS
EXISTING DOCK AREA = 3088.75 SQ. FT.

NOTE: INDICATES DOUBLE BEAM SLIPS
PROPOSED DOCK AREA = 3688.75 SQ. FT.

NOTE: TOTAL NO. OF PILES = 79

March 4, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**DEPARTMENT OF BEACHES AND HARBORS: APPROVAL OF OPTION FOR
AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT –
PARCEL 21 (HOLIDAY HARBOR) - MARINA DEL REY
(4th DISTRICT)
(4 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed Option to Amend Lease Agreement, attached as Exhibit A, is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair of the Board to sign the attached Option to Amend Lease Agreement granting to the current lessee, upon fulfillment of stated conditions, the right to extend the terms of its existing ground lease on Parcel 21 by 39 years.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Parcel 21 lessee, Goldrich & Kest Industries ("Lessee"), has an affiliate that is the Parcel OT lessee. As part of the Parcel OT development plan, a portion of the required replacement public parking is to be placed in a parking garage to be constructed on Parcel 21. Additionally, the Department of Beaches and Harbors ("Department") desires to reacquire a portion of Parcel 21 to expand a County-owned public parking lot (Parcel GR) serving the Marina Beach. Accordingly, an agreement was negotiated with Lessee for the redevelopment of the Parcel 21 property.

The proposed Option to Amend Lease Agreement ("Option") will allow Lessee to exercise its option and receive the benefits of the Amended and Restated Lease ("Restated Lease") attached as Exhibit B, upon demonstration that it has satisfied all of the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the redevelopment project.

Whether or not ultimately exercised, the Parcel 21 Option puts into effect modern lease provisions that have been negotiated in new and extended leases previously presented for your Board's consideration, including: a) reimbursement of County administrative/negotiating costs; b) payment of a non-refundable \$100,000 option fee (which shall be credited against the extension fee if the Option is exercised); c) establishment of a sinking fund to remove leasehold improvements at lease termination; d) modernized "baseball" type arbitration; e) lease assignment and ownership disclosure requirements; f) a 6% late fee plus interest for any late payments; g) security deposit in the amount of 3 months' minimum rent; h) new insurance requirements with insurance levels renegotiated each 5th lease anniversary date; i) County approval rights over construction plans and specifications; j) CPA-certified annual gross revenue reports; k) required maintenance in conformance with Marina standards; and l) liquidated damages of \$100 per day (adjusted for inflation) per cited maintenance deficiency for each deficiency that remains uncorrected after a specified cure period.

If the Option is exercised, in addition to the terms identified just above, the Restated Lease for Parcel 21 also provides for a 39-year lease extension; payment of a \$100,000 lease extension fee (already paid as a non-refundable option fee); demolition of the existing landside improvements; construction of a new commercial building containing not less than 29,000 square feet and an attached parking structure of 447 parking spaces to accommodate boater parking for not only Parcel 21, but also Parcel 20 (the leasehold of another Lessee affiliate), parking for the commercial uses in the new commercial building, and 94 replacement public parking spaces from Parcel OT; complete dock replacement of the existing 182 slips with 103 new slips [Note the lessee's calculation, as illustrated on the proposed plans, indicates the existing anchorage to consist of 148 slips, not 182 slips as we have presented, based on the lessee's belief that each double slip should be counted as one slip rather than two slips]; construction and maintenance of a new waterfront promenade; reconveyance to County at a specified date of the westerly 207 feet of the current leasehold to be used for additional public parking; establishment of a Capital Improvement Fund to be funded by amounts equal to 1.0% of gross revenues derived from the leasehold for years 4 and 5 following completion of the improvements, 1.25% of gross revenues derived from the leasehold for years 6 through 10 and 1.5% of gross revenues thereafter; establishment of a Renovation Fund in the amount of 1.0% of gross revenues annually that must be fully expended to physically reposition the project to then current market requirements between 2034 and 2036, with funding ceasing thereafter; a second complete replacement of the anchorage improvements between years 30 and 35 after the effective date of the Restated Lease; County participation in leasehold sale and/or refinance; County right to recapture the leasehold if the Lessee pursues its sale; and other miscellaneous improvements to the lease (e.g., enhanced audit and record-keeping standards).

Lessee must complete the parking structure as a condition to issuance of the certificate of occupancy for the proposed development of a seniors' congregate care facility on Parcel OT. Once the Lessee and the Parcel OT optionee have obtained all necessary

project entitlements and have fulfilled the other requirements entitling them to exercise the Options for both parcels, we will return to your Board for authority to execute the Restated Lease in substantially the form attached.

The Department has obtained an appraisal that concludes the return to the County from the lease extension for Parcel 21 is equivalent to, or greater than, fair market value.

Implementation of Strategic Plan Goals

In furtherance of County Goals #1 and #4, "Service Excellence" and "Fiscal Responsibility," the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy toward enhancing public access to and enjoyment of the Marina through property redevelopment and modernized lease provisions.

The following chart details the proposed deal terms of the Restated Lease providing for the 39-year lease extension as they relate to your Board's existing lease extension policy:

REDEVELOPMENT
Development of new improvements

• Redevelopment Work: Lessee shall demolish the existing improvements on the premises and construct the following new improvements within five years of receipt of entitlements:

(i) New Commercial Building: A new commercial building containing not less than 29,000 square feet of rentable space and an attached parking structure to accommodate 447 cars. The new commercial building will provide replacement space for all existing landside uses on Parcel 21 and will provide replacement space for the yacht club and office uses presently on Parcel 20. The attached parking structure shall provide parking for the uses contained in the new commercial building, boater parking for Parcels 20 and 21, and 94 public parking spaces moved from Parcel OT. The square footage to be provided for each use and the parking to be provided for each use are summarized in the table below:

| New Commercial Building | Sq. Ft. Provided | Parking Provided |
|-------------------------------|------------------|------------------|
| Yacht Club | 5,000 | 106 |
| Health Club | 10,000 | 20 |
| Retail | 6,000 | 23 |
| Office | 8,000 | 21 |
| Parcel 20 Boater Parking | -- | 112 |
| Parcel 21 Boater Parking | -- | 71 |
| Parcel OT Replacement Parking | -- | 94 |
| Total | 29,000 | 447 |

(ii) Dock Replacement: Complete replacement of existing docks containing 182 slips with 103 slips made of concrete or other material acceptable to the Department Director, with a second dock replacement between the 30th and 35th year from the effective date of the Restated Lease;

(iii) Waterfront Promenade: Construction and maintenance of a waterfront promenade to run the length of the bulkhead.

| | |
|--|--|
| REDEVELOPMENT (continued) | <ul style="list-style-type: none">• Parcel Size Adjustment: The leasehold area shall be reduced by removing the approximately westerly 207 linear feet from the landside area, excluding the Waterfront Promenade area. The parcel size adjustment shall occur up to six months following the completion of construction of the replacement parking for Parcel OT.• Total development cost not less than \$13 million (\$1.35 million for Dock Replacement; \$11.65 million for New Commercial Building and Waterfront Promenade) in 2005 dollars.• Construction of Redevelopment Work to be completed within five years from effective date of the Restated Lease, subject to force majeure, which in no event shall exceed two years.• Capital Improvement Fund. A Capital Improvement Fund to be funded annually by Lessee will be maintained during the term of the lease according to the following schedule: Years 1-3 after completion: none; Years 4-5: 1% of gross revenue; Years 6-10: 1.25% of gross revenue; Years 11+: 1.50% of gross revenue. The Capital Improvement Fund must be fully expended for capital expenditures by ten years prior to the expiration date of the lease, which expenditures are subject to prior approval by the Department Director, not to be unreasonably withheld.• Renovation Fund. A Renovation Fund equal to 1% of gross revenue to be funded annually by Lessee and maintained during the term of the Restated Lease; must be fully expended to physically reposition the project to then current market requirements between 2034 and 2036. Thereafter, no Renovation Fund shall be required. The Renovation Fund may be maintained in the form of a letter of credit. Lessee to provide a renovation plan and budget, subject to County approval. |
| LEASE TERM | <ul style="list-style-type: none">• Option to extend lease on Parcel 21 by 39 years from 8/31/2026 to 8/31/2065. |
| EXTENSION FEE Fee equal to or commensurate with value of the extension | <ul style="list-style-type: none">• The amount of the extension fee shall be \$100,000, payable as set forth below.• Lessee shall pay a non-refundable option fee of \$100,000 prior to the granting of the Option. Such payment shall be credited against the extension fee if the Option is exercised, but shall be non-refundable in the event the Option is not exercised. |
| MARKET RATE RENTS Ensure fair market rents | <ul style="list-style-type: none">• Minimum annual rent during construction to be reset at the beginning of construction equal to 75% of Lessee's previous three years' average total annual rent paid to County.• Minimum annual rent upon earlier of the date of receipt of the first Certificate of Occupancy (temporary) following commencement of construction ("CO Date") or Required Completion Date equal to \$215,000. Thereafter, minimum rent reset every three years equal to 75% of previous three years' average total annual rent paid to County until first renegotiation.• Percentage and minimum rents are subject to renegotiation to fair market rent ten years after earlier of CO Date or Required Completion Date and every ten years thereafter. |

| | |
|--|--|
| PARTICIPATION IN SALE AND REFINANCE Secure County participation in sale and refinance of leasehold | <ul style="list-style-type: none">• Sale Participation: Greater of 5% of Gross Proceeds or 20% of Net Proceeds upon assignment or other direct or indirect transfer of leasehold.• Refinance Participation: 20% of net loan proceeds not reinvested in leasehold. |
| COUNTY ADMIN. COSTS Ensure payment for County costs for lease extension | <ul style="list-style-type: none">• Lessee agrees to reimburse County for costs associated with lease extension negotiations and option and lease preparation, including all appraisal, consultant and legal costs. |
| COUNTY INCOME CONTINUITY Ensure County revenue flow during development | <ul style="list-style-type: none">• Minimum annual rent during construction to be reset at the beginning of construction equal to 75% of Lessee's previous three years' average total annual rent paid to County. |
| RIGHT TO RECAPTURE | <ul style="list-style-type: none">• Provide County with a right to purchase the leasehold interest if Lessee desires to either assign or sell a controlling interest. |
| ARBITRATION | <ul style="list-style-type: none">• Arbitration will use rent-a-judge procedure. "Baseball" type arbitration provision. |
| LEASE ASSIGNMENT - DISCLOSURE ISSUES | <ul style="list-style-type: none">• Lease assignment and ownership disclosure requirements in accord with standard County policy. |
| DOCKMASTER | <ul style="list-style-type: none">• Lessee to maintain a dockmaster to manage the anchorage for the term of the lease. |
| PROMENADE | <ul style="list-style-type: none">• Lessee to construct a waterfront promenade in compliance with Marina Local Coastal Program and subject to County's reasonable approval of plans.• Promenade area to remain within the leasehold, as described in Parcel Size Adjustment above. Lessee retains responsibility for construction and maintenance of Promenade. |
| APPRAISAL | <ul style="list-style-type: none">• The Department has obtained an independent appraisal confirming the return to the County from the lease extension is equivalent to, or greater than, fair market value. |

| | |
|--|--|
| ENTITLEMENTS: SITE COVERAGE, HEIGHT & LAND USES | <ul style="list-style-type: none">• If Lessee is unable to obtain all necessary entitlement and financing approvals within the 12-month Option period, the Director may grant up to two six-month extensions if Lessee can demonstrate it has diligently pursued those approvals.• If Lessee obtains approvals within the 12-month (or 18- or 24-month) period but such approvals are subject to litigation or appeal brought by a third party, then the option exercise date will be tolled pending the resolution of such litigation or appeal; provided that the option exercise date shall in no event be later than four years after the date of the grant of Option.• Density, site coverage, open space, view corridor, building height, entitlement and land uses are subject to Lessee obtaining all County and Coastal Commission planning and entitlement approvals, including that of the Design Control Board.• Lessee may pursue County and Coastal Commission planning and entitlements approvals with respect to the provision of interim replacement parking and interim tenant space during construction. |
|--|--|

Additional Matters

| | |
|--------------------|---|
| OTHER TERMS | <ul style="list-style-type: none">a) Ten years prior to expiration of lease, Lessee to structure funding for removal of improvements (at County's election).b) Rental renegotiation and insurance disputes subject to rent-a-judge procedure pursuant to "baseball" type arbitration.c) Maintenance standards for improvements to conform to Marina del Rey standards as revised from time to time.d) Lease administrative items include: a) late fee of 6% plus interest at prime plus 3% for any late payments; b) security deposit equal to three months' minimum rent; c) insurance levels reset/renegotiated upon execution of the Restated Lease and every five years thereafter; d) County approval rights over all construction plans and specifications; and e) enhanced audit and record-keeping standards.e) Liquidated damages of \$100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after a specified cure period, to be assessed against the security deposit. |
|--------------------|---|

FISCAL IMPACT/FINANCING

The Restated Lease reflects the County's current market rate percentage rents for all relevant categories. It will produce two categories of fiscal benefit to the County: 1) an extension fee; and 2) rent increases due to construction of a new commercial building containing not less than 29,000 square feet of rentable space and new docks. Each component is discussed in detail below.

Extension Fee

Lessee is required to pay an extension fee of \$100,000. A non-refundable Option fee of \$100,000 is due upon the execution of the Option, which may be credited against the extension fee if the Option is exercised.

Rent Increase Due to New Construction

The total rent derived from Parcel 21 during fiscal year 2006-2007 was approximately \$296,000.00. After construction, lease-up and stabilization, annual County rent is projected to rise to approximately \$336,900, an annual increase of approximately \$40,900.

As an additional requirement of the Restated Lease, the Lessee will reconvey back to the County the westerly 207 feet of Parcel 21 to be integrated into the existing Parcel GR public parking lot in order to form a larger public parking lot. Lessee will also be responsible for the cost of converting the westerly 207 feet being reconveyed to a parking lot as per the County's plan.

Costs of consultants involved in the negotiation and development of the Option and Restated Lease are being reimbursed by the Lessee.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Without exercise of the Option, the term of the lease for Parcel 21, which commenced September 1, 1966, will expire August 31, 2026.

Concurrent with the exercise of the Parcel 21 Option, an option as to Parcel OT must also be exercised by Lessee's affiliate, both of which may be exercised only after the entitlements for each project are received. The Lessee has made application to the Department of Regional Planning for its discretionary land use entitlements under the applicable standards of the Marina del Rey Local Coastal Program (LCP), which application is still under review. The Parcel 21 application seeks an LCP amendment to relocate 94 public parking spaces from Parcel OT to Parcel 21 and to modify the development permit conditions to transfer the yacht club and marine commercial uses from Parcel 20 to Parcel 21. The Parcel OT application seeks an LCP amendment to transfer land use entitlements across development zones to allow for the build-out of congregate care units and to relocate 94 public parking spaces to Parcel 21. Approval of the Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

Amendment and extension of the existing lease is authorized by Government Code Sections 25907 and 25536. The extended lease term is in conformance with the maximum 99-year period authorized by California law.

At its meeting of February 13, 2008, the Small Craft Harbor Commission _____ the recommendation to approve the Option and the Restated Lease in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

The Option is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. Approval of the Option does not authorize construction or reconstruction of any improvements on the parcel. The discretionary land use entitlements and the corresponding environmental documentation necessary to implement the proposed redevelopment contemplated by the Option and the Restated Lease are under review by the Department of Regional Planning.

CONTRACTING PROCESS

The new Restated Lease will be available to the Lessee upon the exercise of the Option. Upon Lessee's demonstration that it has satisfied the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project, we will return to your Board with final confirmation that the conditions and approvals for exercise contained in the Option have been satisfied. At that time, we will request authorization for execution of the Restated Lease.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Authorize the Executive Officer/Clerk of the Board to send two copies of the executed Option to the Department of Beaches and Harbors.

Respectfully submitted,

William T Fujioka

SW:SK:GB:ks

Attachments (2)

c: County Counsel

**OPTION TO AMEND LEASE AGREEMENT
(PARCEL 21)**

THIS OPTION TO AMEND LEASE AGREEMENT ("Agreement") is made and entered into as of the _____ day of January, 2008, by and between the COUNTY OF LOS ANGELES ("County") and HOLIDAY-PANAY WAY MARINA, L.P. a California limited partnership ("Lessee").

RECITALS

A. County and Lessee, or its predecessors-in-interest, entered into Lease No. 11210 dated September 27, 1966, as amended (the "Existing Lease"), pursuant to which Lessee leases from County certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 21, as more particularly described in the Existing Lease (the "Premises").

B. The term of the Existing Lease is currently scheduled to expire on August 31, 2026 (the "Existing Expiration Date").

C. Lessee has requested County, and County is willing, to grant Lessee an option to extend the term of the Existing Lease through August 31, 2065.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. **Grant of Option.** County hereby grants to Lessee an option (the "Option") to extend the term of the Existing Lease through August 31, 2065 (the "Extended Expiration Date"). Such extension shall be on the terms and conditions set forth in the form of Amended and Restated Lease Agreement for Parcel 21 attached to this Agreement as Exhibit A (the "Restated Lease"). In consideration of County's grant of the Option to Lessee, and as a condition to the effectiveness of the Option, Lessee shall pay to County concurrent with Lessee's execution of this Agreement the sum of One Hundred Thousand Dollars (\$100,000.00) (the "Option Fee").

2. **Option Term.** The term of the Option (the "Option Term") shall commence on the date of this Agreement and expire on that date (the "Option Expiration Date") which is the earlier of (i) forty-five (45) days following the later of the Entitlement Receipt Date under this Agreement and the "Entitlement Receipt Date" under the Parcel 147 Option Agreement, as defined in Section 4.4(b) of this Agreement (the "Parcel 147 Entitlement Receipt Date"), or (ii) the date that is one (1) year following the date of this Agreement (the "Outside Expiration Date").

For purposes hereof, the "Entitlement Receipt Date" shall mean the first date upon which (a) Lessee has received all discretionary planning and zoning land use entitlements, permits and other approvals required to be obtained from governmental

authorities (including the County and the California Coastal Commission) for the construction of the Redevelopment Work (as defined below), including, without limitation, for the development on and relocation to the Premises of the Replacement Parcel 147 Parking Spaces (as defined in Section 15.20.1 of the Restated Lease) and the development on and relocation to the Premises of the Additional Parcel 20 Parking Spaces (as defined in Section 15.20.1 of the Restated Lease), and has satisfied all conditions to the issuance of a building permit for the Redevelopment Work other than the payment of any applicable building permit fee (all of the matters described in this clause (a) are collectively referred to as the "Entitlements"), (b) any appeal period to contest the issuance of the Entitlements has lapsed, and (c) there is no proceeding or litigation pending to appeal the issuance of the Entitlements, or to enjoin or restrain the performance of the Redevelopment Work (not including any proceeding or litigation brought by or on behalf of any partner, shareholder or member of, or any other person or entity affiliated with, or otherwise directly or indirectly having an ownership interest in, Lessee or the Parcel 147 Lessee (a "Lessee Affiliate")), or if such a proceeding or litigation is pending, then the date such proceeding or litigation has been dismissed or a decision or judgment rendered thereon, which decision or judgment is not subject to further appeal.

For purposes of this Agreement, the "Redevelopment Work" shall mean the demolition of the existing Improvements (as defined in the Restated Lease) currently located on the Premises and the construction of new Improvements in accordance with the Redevelopment Plan attached to the Restated Lease as Exhibit B, including without limitation: (i) a new commercial building containing not less than 29,000 square feet of rentable area of space to be initially allocated approximately as follows: 5,000 rentable square feet of yacht club space, 10,000 rentable square feet of health club space, 2,916 rentable square feet of retail space and 11,432 rentable square feet of marine commercial office space; (ii) an attached parking structure with 447 parking spaces or such other number of parking spaces as required under Section 15.20 of the Restated Lease (the "Parking Structure"); (iii) complete replacement of the existing 182 boat slips and related Improvements with approximately 87 new boat slips (with an average slip length of 36 lineal feet) and related Improvements, provided that County shall have the right to approve Lessee's proposed configuration and specifications for such slips; and (iv) the Promenade Work described in Section 15.19 of the Restated Lease.

Notwithstanding any contrary provision hereof, if by that date which is forty five (45) days prior to the Outside Expiration Date (the "Extension Request Date") (1) Lessee and the Parcel 147 Lessee have been unable to cause one or both of the Entitlement Receipt Date or the Parcel 147 Entitlement Receipt Date to occur and one or both of the Entitlement Receipt Date or the Parcel 147 Entitlement Receipt Date is (are) not reasonably expected to occur by the Outside Expiration Date, (2) in the reasonable judgment of the Director of the Department of Beaches and Harbors of the County ("Director"), Lessee and the Parcel 147 Lessee have proceeded with diligent efforts to cause the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur by the Outside Expiration Date, and (3) on or before the Extension Request Date Lessee submits a written request in writing to Director requesting an extension of the Outside Expiration Date to afford Lessee and the Parcel 147 Lessee (as applicable) with

additional time to cause the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur (as applicable), then Director may grant, in its discretion, one or more extensions of the Outside Expiration Date, provided that (A) any extension of the Outside Expiration Date shall be limited to that period of time which, in the reasonable judgment of Director, is reasonably necessary to permit the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur, and (B) Director shall not extend the Outside Expiration Date by more than six (6) months at a time, and in no event shall Director extend the Outside Expiration Date beyond that date which is two (2) years following the date of this Agreement. The Outside Expiration Date shall not be extended under this paragraph if Lessee is in breach or default of this Agreement or the Parcel 147 Lessee is in breach or default of the Parcel 147 Option Agreement. Lessee shall not be required to pay to County a fee for any extension of the Outside Expiration Date pursuant to this paragraph.

In addition, if as of forty-five (45) days prior to the Outside Expiration Date (as such date may have been extended pursuant to the immediately preceding paragraph), the Entitlement Receipt Date or the Parcel 147 Entitlement Receipt Date has not occurred because (a) the Redevelopment Work or the Development Work under the Parcel 147 Option Agreement (the "Parcel 147 Development Work") is the subject of a pending proceeding or litigation to appeal the issuance of the Entitlements for such particular work or to enjoin or restrain the performance of the Redevelopment Work or the Parcel 147 Development Work (other than any proceeding or litigation brought by or on behalf of a Lessee Affiliate), or (b) a moratorium, temporary restraining order, injunction or other court order prohibits the issuance of the Entitlements for the Redevelopment Work or the Parcel 147 Development Work, and such moratorium, temporary restraining order, injunction or other court order also pertains to all other similar projects in Marina del Rey on land leased from the County, then as long as Lessee and/or the Parcel 147 Lessee (as applicable) continue to diligently prosecute or pursue the defense or removal of such proceeding, litigation, moratorium or court order, the Outside Expiration Date shall be extended until not later than forty-five (45) days following the date that such proceeding, litigation, moratorium or court order is resolved in favor of the issuance or validity of the Entitlements for the Redevelopment Work and the Parcel 147 Development Work (as applicable), with no further right of appeal; provided, however, in no event shall the Outside Expiration Date be extended beyond the fourth (4th) anniversary of the date of this Agreement. The Outside Expiration Date shall not be extended under this paragraph if Lessee is in breach or default of this Agreement or the Parcel 147 Lessee is in breach or default of the Parcel 147 Option Agreement. Lessee shall not be required to pay to County a fee for any extension of the Outside Expiration Date pursuant to this paragraph.

3. Exercise of Option. The Option shall be exercisable by Lessee only by Lessee's strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Lessee shall notify County in writing of its exercise of the Option; (ii) Lessee shall accompany the notice described in the preceding clause (i) with Lessee's execution and delivery to County of the Restated Lease with any blank or bracketed terms set forth in Exhibit A completed in accordance with the terms and provisions of this Agreement (County hereby agrees to cooperate with Lessee to permit the completion of such blank or bracketed terms); (iii) as of the date of Lessee's delivery of the notice described in clause (i) above Lessee shall not be in material breach or default of any

material term or provision of the Existing Lease, after notice from County and the expiration of any applicable cure period thereunder; (iv) the Entitlement Receipt Date shall have occurred and there shall be no action or proceeding pending or, to Lessee's or County's actual knowledge, threatened, to contest the Entitlements issued as a condition to the occurrence of the Entitlement Receipt Date or to enjoin or restrain the performance of the Redevelopment Work; (v) Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by the Director in Director's reasonably judgment, to complete the Redevelopment Work; (vi) Director shall have approved all plans, specifications and other materials for the Redevelopment Work required to be submitted to Director pursuant to Section 4.3 of this Agreement; (vii) Lessee shall have satisfied the conditions to the exercise of the Option set forth in Section 4.4; and (viii) all conditions to the exercise of the Parcel 147 Option shall have been satisfied and the Parcel 147 Lessee shall have concurrently exercised the Parcel 147 Option. Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Restated Lease and the Parcel 147 Lease not later than forty-five (45) days following the date of Lessee's exercise of the Option.

4. Entitlements and Plan Preparation During Option Term.

4.1 Obtaining Entitlements. During the Option Term, Lessee shall use diligent efforts to obtain as soon as reasonable possible all Entitlements necessary to perform the Redevelopment Work and, unless otherwise directed by Director, the Off-Site Parking Improvements described in Section 4.5(a) below. Such efforts shall include Lessee's expenditure of such funds, including, without limitation, application fees, travel costs, architectural fees and consulting and lobbying fees, as reasonably necessary to expedite the permit, license and other approval processes.

4.2 County Cooperation. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the "Department") shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the construction of the Redevelopment Work and, unless otherwise directed by Director, the construction of the Off-Site Parking Improvements described in Section 4.5(a) below. Such cooperative efforts may include the Department's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Department is required or helpful (including without limitation, but only if approved by Director, co-application by County to eliminate or reduce the Parcel 147 replacement public parking spaces described in Section 4.4(b) hereof); provided, however, that Lessee shall reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by the Department in connection with such joinder or cooperative efforts as to the Redevelopment Work (but not as to the Off-Site Parking Improvements). Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Agreement and/or the Restated Lease shall be approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Restated Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of the Redevelopment Work and operation and other

use of the Premises; and that the Department's duty to cooperate and County's approvals under this Agreement and/or the Restated Lease do not in any modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement and/or the Restated Lease.

4.3 Plans and Specifications for Redevelopment Work. The Redevelopment Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the Restated Lease. The requirements of Article 5 of the Lease include, without limitation, the obligation of Lessee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Redevelopment Work, as set forth in more detail in Sections 5.2 through 5.4 of the Restated Lease. The schedule for the preparation, submittal and approval of such plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the Restated Lease. Notwithstanding the foregoing, during the period commencing on the date of this Agreement and expiring on the earlier of Lessee's exercise of the Option or the Option Expiration Date, Lessee shall prepare and submit to Director for Director's approval, those portions of the plans, specifications and other materials described in Sections 5.2 through 5.4 of the Restated Lease which are required to be submitted to governmental authorities (including the County and the California Coastal Commission) in connection with Lessee's applications for and/or receipt of all Entitlements for the Redevelopment Work. Lessee shall accompany such plans, specifications and other materials with the construction cost estimates described in such Sections 5.2 through 5.4, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 4.3 shall be in accordance with the terms and provisions of Sections 5.2 through 5.4 of the Restated Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Lessee in accordance with a schedule which shall facilitate Lessee's satisfaction of all conditions precedent to the exercise of the Option on or before the Option Expiration Date (as the same may be extended pursuant to the terms hereof).

4.4 Parking.

(a) Relocation of Parcel 20 Anchorage Parking. Certain property located adjacent to the Premises and commonly known as Parcel 20 is currently leased by County to Lessee's affiliate, Panay Way Marina, L.P. (with its successors and assigns, the "Parcel 20 Lessee"). If Lessee exercises the Option, the Parking Structure to be constructed on the Premises by Lessee as a part of the Redevelopment Work is contemplated to include 112 parking spaces to facilitate the relocation to the Parking Structure of the parking facilities for the Parcel 20 anchorage improvements. Section 15.20.2 of the Restated Lease provides for the reservation of an easement in favor of Parcel 20 for the use of such spaces. Lessee, the Parcel 20 Lessee and County shall cooperate to seek any and all governmental approvals (if any) required for the relocation of the parking facilities for the Parcel 20 anchorage improvements from Parcel 20 to the Parking Structure upon the completion of the construction thereof. A condition to the exercise by Lessee of the Option shall be the receipt of any such required governmental approvals.

(b) Parcel 147 Replacement Parking. Concurrent or substantially concurrent herewith, County has entered into a Lease Option Agreement (the "Parcel 147 Option Agreement") with Lessee's affiliate, MDR Oceana, LLC (with its successors and assigns, the "Parcel 147 Lessee") pursuant to which County has granted the Parcel 147 Lessee an option (the "Parcel 147 Option") to enter into a lease with County (the "Parcel 147 Lease") for certain property commonly known as Parcel 147. The exercise by the Parcel 147 Lessee of the Parcel 147 Option is conditioned upon Lessee's agreement to provide the 94 replacement public parking spaces required to satisfy the off-site replacement public parking requirement arising from the development of Parcel 147. If the California Coastal Commission approves the elimination (or reduction in the number) of the replacement public parking spaces required for the Parcel 147 development, then unless County and Lessee otherwise agree, the number of parking spaces required to be constructed in the Parking Structure shall be reduced by the number of such replacement public parking spaces that are eliminated. If the requirement for replacement public parking spaces is eliminated or reduced pursuant to this Section 4.4(b), then prior to execution of the Restated Lease, Section 15.20.3 of the Restated Lease shall be deleted or modified (as applicable) to reflect such elimination or reduction. If the requirement for replacement public parking spaces arising from the development of Parcel 147 is eliminated, then (i) the exercise of the Parcel 147 Option shall not be a condition precedent to the exercise of the Option under this Agreement, and (ii) all references in this Agreement to matters pertaining to the exercise of the Parcel 147 Option or to the Entitlements or Development Work for Parcel 147, shall be of no further force or application, and thereafter, for the avoidance of doubt, no obligation of, or exercise of any right or remedy by, Lessee hereunder shall be conditioned upon, or affected by, any act or omission of the Parcel 147 Lessee with respect to Parcel 147.

4.5 Lessee Cooperation With Regard to Other Projects.

(a) The Restated Lease provides for the termination of the Restated Lease with respect to a portion of the Premises described in Section 2.2 of the Restated Lease as the "Partial Termination Premises" as of the "Partial Termination Date" (as defined in Section 2.2 of the Restated Lease). One of the potential uses being considered by County for the Partial Termination Premises is for additional off-site replacement public parking facilities. It is contemplated that such additional off-site parking might be developed, at least in part, to satisfy requirements that may arise in connection with the development of other projects in Marina del Rey, including without limitation, those contemplated for Parcels 10/FF, 33/NR and IR. If requested by Director, concurrent with Lessee's pursuit of the Entitlements for the construction of the Redevelopment Work, Lessee shall also, jointly with County, pursue the governmental approvals and entitlements required for the performance of the Parking Lot Work described in Section 2.2 of the Restated Lease. In all events, Lessee agrees to use its commercially reasonable efforts (at no cost to Lessee) to cooperate with any efforts of County to obtain governmental approvals and entitlements for County's use of the Partial Termination Premises and neither Lessee nor any of its affiliates shall object or take any action to interfere with County's efforts to obtain governmental approvals and entitlements for the use of the Partial Termination Premises for replacement public parking or other parking purposes designated by County. Lessee's obligations under this Section 4.5(a) shall expressly survive the exercise of the

Option by Lessee and shall be deemed to be incorporated into the Restated Lease as a covenant that is binding on Lessee thereunder.

(b) County is considering the development of a new Department headquarters facility on certain portions of Parcel 20 on which an existing commercial building and related improvements are currently located. If County determines to proceed with the development of such headquarters facility, then Lessee agrees to use commercially reasonable efforts (at no cost to Lessee) to cooperate with County's efforts to obtain governmental approvals and entitlements for the construction of such headquarters facility, and neither Lessee nor any of its affiliates shall object or take any action to interfere with the development of such headquarters facility. The Lessee's obligations under this Section 4.5(b) shall expressly survive the exercise of the Option by Lessee and shall be deemed to be incorporated into the Restated Lease as a covenant that is binding on Lessee thereunder.

5. Alternative Lease Amendment. If Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date), then (i) the Option shall be automatically terminated; and (ii) within forty-five (45) days following the Option Expiration Date County and Lessee shall execute and deliver an amendment to the Existing Lease (the "Non-Exercise Amendment"), which amendment shall amend the Existing Lease as follows:

(a) amend and restate Sections 11 through 15 of the Existing Lease in accordance with all of the terms and provisions of Sections 4.1 through 4.5 of the Restated Lease, except that:

(i) Subsection 4.2.1 of the Restated Lease shall be modified to read as follows:

"Lessee shall pay to County the minimum rent described in this subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 and 4.4 below) during each year of the Term (the "Annual Minimum Rent"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "Monthly Minimum Rent"), except that any amounts payable for less than a full calendar year or month shall be prorated based on the number of days in such partial year or month as compared to the total number of days in the full calendar year or month during which such period occurs. For the three (3) year period commencing with the Effective Date, the Annual Minimum Rent shall be equal to seventy-five percent (75%) of the average total annual rent or other charges (including, without limitation, minimum rent and percentage rent) that was payable by Lessee to County under the Existing Lease for the three (3) year period immediately preceding the Effective Date. From and after the third anniversary of the Effective Date, the Annual Minimum Rent shall be as set forth in Sections 4.3 and 4.4 below."

(ii) Section 4.3 of the Restated Lease shall be modified to read as follows:

"As of the third (3rd) anniversary of the Effective Date (the "First Adjustment Date") and as of each third (3rd) anniversary of the First Adjustment Date thereafter (each an "Adjustment Date" and collectively the "Adjustment Dates"), the Annual Minimum Rent shall be adjusted. Until the Renegotiation Date provided in Section 4.4 hereof, the Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the scheduled total annual rent due (including Monthly Minimum Rent and Percentage Rent) from Lessee to County under Section 4.2 of this Lease during the thirty-six (36) month period immediately preceding the Adjustment Date."

(iii) The first paragraph of Section 4.4 of the Restated Lease shall be modified to read as follows:

"Effective on each tenth (10th) anniversary of the Effective Date (each a "Renegotiation Date" and collectively, the "Renegotiation Dates"), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises."

(b) add Article 16 of the Restated Lease to the Existing Lease;

(c) amend and restate Section 7 of the Existing Lease in accordance with Article 7 of the Restated Lease;

(d) amend and restate Sections 8 and 10 of the Existing Lease in accordance with Sections 5.2 through 5.12 of the Restated Lease, except that (i) all references to the Redevelopment Work shall mean and refer to future Improvements or alterations that Lessee desires to make to the Premises, and (ii) all references to any schedule for the commencement or completion of the Redevelopment Work shall be deleted;

(e) amend and restate Section 18 of the Existing Lease in accordance with Sections 2.3 and 2.4 of the Restated Lease;

(f) amend and restate Sections 22A and 22C of the Existing Lease in accordance with Sections 11.1, 11.2 (excepting subsections 11.2.4 and 11.2.5) and 11.3 of the Restated Lease;

(g) amend Section 26 of the Existing Lease to adjust the amount and scope of commercial general liability, automobile liability, garagekeeper's legal liability, workers compensation and employer's liability insurance coverage required to be carried by Lessee to equal the amounts and coverages set forth in subsections 9.1.1, 9.1.2 and 9.1.3 of the Restated Lease, and to add to Section 26 of the Existing Lease the provisions of Section 9.6 of the Restated Lease;

(h) amend and restate Sections 30, 31 and 32 of the Existing Lease in accordance with Article 14 of the Restated Lease;

(i) add to the Existing Lease the provisions of Section 10.2 of the Restated Lease; and

(j) incorporate into the Existing Lease the definitions of capitalized terms used in the Restated Lease to the extent such terms are used in the Non-Exercise Amendment pursuant to clauses (a) through (i) above.

For purposes of the Non-Exercise Amendment, all references in the Restated Lease to the "Effective Date" shall mean and refer to the date of the execution and delivery of the Non-Exercise Amendment, but not later than forty-five (45) days following the Option Expiration Date.

6. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by County in the review, negotiation, preparation and documentation of the Restated Lease, the Non-Exercise Amendment, this Agreement and the term sheets and memoranda that preceded the foregoing. The parties acknowledge that Lessee has deposited the sum of Ninety Thousand Dollars (\$90,000.00) toward those costs. County shall deliver to Lessee an initial report detailing such expenditures within ninety (90) days after the date of this Agreement. County shall thereafter deliver supplemental reports to Lessee for costs, if any, incurred subsequent to the initial report.

7. Miscellaneous.

7.1 Time is of the Essence. Time is of the essence of this Agreement, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

7.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

7.3 Notices. All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 15.10 of the Restated Lease.

7.4 Captions. The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

7.5 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party.

7.6 No Assignment. Lessee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute discretion.

7.7 Entire Agreement. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supercedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

7.8 Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

7.9 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

7.10 Counterparts. This Agreement may be signed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.

7.11 Successors and Assigns. Subject to Section 7.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

7.12 Exhibits. Exhibits A and B attached to this Agreement are hereby expressly incorporated herein by reference.

7.13 Existing Encumbrances. Lessee represents and warrants that there are no deeds of trust, mortgages or other security interests that encumber Lessee's interest in the Existing Lease or the Premises except as disclosed in the Lender's Consent attached hereto, and that except for partnership consents that have been obtained by Lessee, no consent is required from any other person or entity as a condition to the effectiveness of this Agreement against Lessee and its interest in the Existing Lease and Premises.

IN WITNESS WHEREOF, County and Lessee have entered into this Agreement
as of the day and year first written above.

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

HOLIDAY-PANAY WAY MARINA, L.P.,
a California limited partnership
By: GKB Development co., LLC, a General
Partner
By: Warren L. Breslow
Name: Warren L. Breslow, as Trustee
Its: of The Warren L. Breslow Trust, a
Managing Member

ATTEST:

SACHI HAMAI,
Executive Officer of the Board of
Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.,
OFFICE OF COUNTY COUNSEL

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

LENDER CONSENT

The undersigned represents that it is the current beneficiary under that certain Deed of Trust With Assignment of Rents dated September 30, 1999, originally granted to Holiday Marinas, Inc., and recorded in the Official Records of Los Angeles County, California on October 1, 1999 as Instrument No. 99-187427 (the "Deed of Trust"), as assigned to the undersigned by Assignment of Deed of Trust dated January 31, 2001 and recorded in the Official Records of Los Angeles County, California as Instrument No. 01-0199678. As such current beneficiary the undersigned hereby consents to the foregoing Option to Amend Lease Agreement and agrees that the Deed of Trust is subject and subordinate to such Option to Amend Lease Agreement.

OVERLAND FINANCIAL COMPANY

LLC, a California limited liability company

By: Overland Capital Corp., a Managing Member

By:

Name: Jona Goldrich

Its: President

EXHIBIT A
RESTATED LEASE

AMENDED AND RESTATED LEASE AGREEMENT

by and between

County of Los Angeles

and

Holiday-Panay Way Marina, L.P.

(Parcel 21--Lease No. _____)

Dated as of _____

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**AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 21--MARINA DEL REY**

THIS AMENDED AND RESTATED LEASE AGREEMENT ("Lease") is made and entered into as of _____, ____ ("Effective Date"), by and between the COUNTY OF LOS ANGELES ("County"), and HOLIDAY-PANAY WAY MARINA, L.P., a California limited partnership (together with its permitted successors and assigns, "Lessee").

WITNESSETH

WHEREAS, the parties hereto or their predecessors in interest, entered into Lease No. 11210 dated September 27, 1966 (as amended prior hereto, the "Original Lease") whereby Lessee leases from County that certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 21 and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference ("Premises"), the term of which commenced on September 1, 1966 and currently extends through August 31, 2026 (the "Original Term"); and

WHEREAS, County and Lessee have entered into that certain Option to Amend Lease Agreement dated January __, 2008 (the "Option Agreement"), pursuant to which County granted Lessee an option (the "Option") to amend and restate the Original Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, an extension of the term through August 31, 2065; and

WHEREAS, Lessee has exercised the Option in accordance with the terms and provisions of the Option Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree as follows:

1. BACKGROUND AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the meanings as follows:

1.1.1. "ACCOUNTING YEAR" shall have the meaning set forth in Section 14.7.

1.1.2. "ACTUAL COST" shall mean the reasonable cost and expenses incurred by County with respect to a particular activity or procedure, including without limitation (i) expenditures to third party legal counsel, financial consultants and advisors, (ii) costs incurred in connection with appraisals, and (iii) County's internal overhead and administrative costs, which include without limitation the value of services provided by County's in-house counsel, lease administrators and/or lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below the County department head).

1.1.3. "ADA" shall have the meaning set forth in Section 1.2.

1.1.4. "ADDITIONAL PARCEL 20 PARKING SPACES" shall have the meaning set forth in subsection 15.20.1.

1.1.5. "ADJUSTMENT DATES" shall have the meaning set forth in Section 4.3.

1.1.6. "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Section 4.6.

1.1.7. "AGGREGATE TRANSFER" shall have the meaning set forth in subsection 4.6.3.

1.1.8. "ANCHORAGE IMPROVEMENTS" shall have the meaning set forth in Section 5.1.

1.1.9. "ANNUAL MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.10. "APPLICABLE LAWS" shall have the meaning set forth in subsection 1.2.1.

1.1.11. "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate, as defined in subsection 4.4.6, plus three percent (3%) per annum; however, the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws. In the event that the Applicable Rate as determined by the first sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

1.1.12. "APPROVED SLIP LEASE" shall have the meaning set forth in subsection 11.1.2.

1.1.13. "APPROVED FINAL PLANS, SPECIFICATIONS AND COSTS" shall have the meaning set forth in subsection 5.5.1.

1.1.14. "ASSIGNMENT STANDARDS" shall have the meaning set forth in Section 11.2.

1.1.15. "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.16. "AWARD" shall have the meaning set forth in subsection 6.1.3.

1.1.17. "BASE VALUE" shall have the meaning set forth in subsection 4.8.1.1.

1.1.18. "BENEFICIAL INTEREST" shall have the meaning set forth in subsection 4.6.4.

1.1.19. "BOARD" shall mean the Board of Supervisors for the County of Los Angeles.

1.1.20. "BUSINESS DAY" shall have the meaning set forth in Section 17.3.

1.1.21. "CALCULATION NOTICE" shall have the meaning set forth in Section 4.7.

1.1.22. "CAPITAL IMPROVEMENT FUND" shall have the meaning set forth in Section 5.13.

1.1.23. "CHANGE OF OWNERSHIP" shall have the meaning set forth in subsection 4.6.1.

1.1.24. "CHANGE OF CONTROL" shall have the meaning set forth in subsection 4.6.1.

1.1.25. "CITY" shall mean the City of Los Angeles, California.

1.1.26. "COMPLETION DATE" shall mean the date of receipt of the first Temporary Certificate of Occupancy or other applicable governmental permit, certificate or approval for the legal occupancy of any of the Improvements constructed on the Premises as part of the Redevelopment Work pursuant to Article 5 of this Lease.

1.1.27. "CONDEMNATION" shall have the meaning set forth in subsection 6.1.1.

1.1.28. "CONDEMNOR" shall have the meaning set forth in subsection 6.1.4.

1.1.29. "CONSUMER PRICE INDEX" shall mean the Consumer Price Index-- All Urban Consumers for Los Angeles/Riverside/Orange Counties, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon by County and Lessee.

1.1.30. "COUNTY" shall have the meaning set forth in the first paragraph of this Lease.

1.1.31. "COUNTY OPTION" shall have the meaning set forth in subsection 11.2.4.

1.1.32. "COUNTY OPTION PRICE" shall have the meaning set forth in subsection 11.2.4.

1.1.33. "COUNTY POOL RATE" shall have the meaning set forth in subsection 4.4.5 of this Lease.

1.1.34. "DATE OF TAKING" shall have the meaning set forth in subsection 6.1.2.

1.1.35. "DEPARTMENT" shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.36. "DESIGNEES" shall have the meaning set forth in subsection 15.20.2.

1.1.37. "DIRECTOR" shall mean the Director of the Department of Beaches and Harbors of the County of Los Angeles or any successor County officer responsible for the administration of this Lease.

1.1.38. "DISQUALIFICATION JUDGMENT" shall have the meaning set forth in subsection 16.15.1.

1.1.39. "DOCUMENTED TRANSACTION COSTS" shall have the meaning set forth in subsection 4.8.1.2.

1.1.40. "EFFECTIVE DATE" shall mean the date set forth in the first preamble paragraph of this Lease.

1.1.41. "ENCUMBRANCE" shall have the meaning set forth in subsection 12.1.1.

1.1.42. "ENCUMBRANCE HOLDER" shall have the meaning set forth in subsection 12.1.1.

1.1.43. "ENR INDEX" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index as the parties may mutually agree upon if such index is no longer published or otherwise available.

1.1.44. "ENTITLEMENTS" shall mean all entitlements, permits, licenses and other approvals required to be obtained from governmental authorities (including County and the California Coastal Commission) for the construction of the Redevelopment Work.

1.1.45. "EQUITY ENCUMBRANCE HOLDER" shall have the meaning set forth in subsection 12.1.1.

1.1.46. "EQUITY FORECLOSURE TRANSFEREE" shall have the meaning set forth in subsection 12.2.1.

1.1.47. "EVENTS OF DEFAULT" shall have the meaning set forth in Section 13.1.

1.1.48. "EXCESS PERCENTAGE RENT PAYMENT" shall have the meaning set forth in subsection 4.2.2.4.

1.1.49. "EXECUTION DATE" shall mean the date of execution of this Lease by County.

1.1.50. "EXCLUDED DEFAULTS" shall have the meaning set forth in subsection 12.3.3.

1.1.51. "EXTENDED TIME" shall have the meaning set forth in Section 15.15.

1.1.52. "FAIR MARKET RENTAL VALUE" shall have the meaning set forth in subsection 4.4.1.

1.1.53. "FINANCING EVENT" shall have the meaning set forth in Section 12.1.1.

1.1.54. "FIRST ADJUSTMENT DATE" shall have the meaning set forth in Section 4.3.

1.1.55. "FORCE MAJEURE" shall have the meaning set forth in subsection 5.7.3.4.

1.1.56. "FORECLOSURE TRANSFER" shall have the meaning set forth in subsection 12.2.1.

1.1.57. "FORECLOSURE TRANSFEREE" shall have the meaning set forth in subsection 12.2.1.

1.1.58. "GROSS ERROR" shall have the meaning set forth in subsection 16.15.4.

1.1.59. "GROSS RECEIPTS" shall have the meaning set forth in subsection 4.2.2.3.

1.1.60. "IMPROVEMENTS" means all buildings, structures, fixtures, docks, anchorage facilities, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises, including without limitation, the Redevelopment Work.

1.1.61. "IMPROVEMENT COSTS" shall have the meaning set forth in subsection 4.8.1.1.

1.1.62. "INCOME APPROACH" shall have the meaning set forth in Section 6.5.

1.1.63. "INITIATING PARTY" shall have the meaning set forth in the first paragraph of Article 16.

1.1.64. "INSTITUTIONAL LENDER" shall have the meaning set forth in subsection 12.3.1.

1.1.65. "INSURANCE RENEGOTIATION DATE" shall have the meaning set forth in Section 9.6.

1.1.66. "LATE FEE" shall have the meaning set forth in Section 4.5.

1.1.67. "LEASE" shall mean this Amended and Restated Lease Agreement.

1.1.68. "LEASE YEAR" shall have the meaning set forth in Section 2.1.

1.1.69. "LESSEE" shall have the meaning set forth in the first paragraph of this Lease.

1.1.70. "LESSEE SALE PRICE" shall have the meaning set forth in subsection 11.2.4.

1.1.71. "LETTER OF CREDIT" shall have the meaning set forth in Section 7.1.

1.1.72. "MAJOR SUBLEASE" shall have the meaning set forth in subsection 11.1.1.

1.1.73. "MAJOR SUBLESSEE" shall have the meaning set forth in subsection 11.1.1.

1.1.74. "MONTHLY MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.75. "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 6.7.

1.1.76. "NET PROCEEDS SHARE" shall have the meaning set forth in Section 4.6.

1.1.77. "NET REFINANCING PROCEEDS" shall have the meaning set forth in subsection 4.8.5.

1.1.78. "NET TRANSFER PROCEEDS" shall have the meanings set forth in subsections 4.8.1 and 4.8.2.

1.1.79. "NEW COMMERCIAL BUILDING" shall have the meaning set forth in Section 5.1.

1.1.80. "NOTICE OF COMPLETION" shall have the meaning set forth in subsection 5.7.7.

1.1.81. "ON-SITE PARKING SPACES" shall have the meaning set forth in subsection 15.20.1.

1.1.82. "OPERATION PLAN" shall have the meaning set forth in subsection 15.20.4.

1.1.83. "OPTION" shall have the meaning set forth in the preamble to this Lease.

1.1.84. "OPTION AGREEMENT" shall have the meaning set forth in the preamble to this Lease.

1.1.85. "ORIGINAL LEASE" shall have the meaning set forth in the preamble to this Lease.

1.1.86. "ORIGINAL TERM" shall have the meaning set forth in the preamble to this Lease.

1.1.87. "OWNERSHIP INTERESTS" shall have the meaning set forth in subsection 12.1.1.

1.1.88. "PARCEL 147" shall mean the property previously commonly known as Parking Lot 8 or Parcel OT, including the annexation of a portion of Parcel P, in the Marina del Rey Small Craft Harbor [and currently leased by County to Lessee's affiliate, MDR Oceana, LLC, a California limited liability company, pursuant to that certain Lease Agreement dated _____ (the "Parcel 147 Lease")].

1.1.89. "PARCEL 20" shall mean the property commonly known as Parcel 20 in the Marina del Rey Small Craft Harbor and currently leased by County to Lessee's affiliate, Panay Way Marina, L.P., a California limited partnership, pursuant to that certain Amended and Restated Lease Agreement dated September 9, 2004, as amended by that certain Amendment No. 12 to Amended and Restated Lease dated as of _____, 2007 (as so amended, the "Parcel 20 Lease").

1.1.90. "PARCEL 147 LESSEE" shall mean the lessee from time to time under the Parcel 147 Lease.

1.1.91. "PARCEL 20 LESSEE" shall mean the lessee from time to time under the Parcel 20 Lease, and any other lessee of Parcel 20 (or the portion of Parcel 20 on which the anchorage improvements are located) designated from time to time by County.

1.1.92. "PARKING STRUCTURE" shall have the meaning set forth in Section 5.1.

1.1.93. "PARTIAL TAKING" shall have the meaning set forth in Section 6.5.

1.1.94. "PARTIAL TERMINATION DATE" shall have the meaning set forth in Section 2.2.

1.1.95. "PARTIAL TERMINATION PREMISES" shall have the meaning set forth in Section 2.2.

1.1.96. "PAYMENT BOND" shall have the meaning set forth in subsection 5.5.4.2.

1.1.97. "PERCENTAGE RENT" shall have the meaning set forth in subsection 4.2.2.

1.1.98. "PERFORMANCE BOND" shall have the meaning set forth in subsection 5.5.4.1.

1.1.99. "PERMITTED CAPITAL EXPENDITURES" shall have the meaning set forth in Section 5.13.

1.1.100. "PERMITTED USES" shall have the meaning set forth in Section 3.1.

1.1.101. "PREMISES" shall have the meaning set forth in the first recital to this Lease, as more specifically described in Exhibit A hereto.

1.1.102. "PRIME RATE" shall have the meaning set forth in subsection 4.4.5.

1.1.103. "PROMENADE WORK" shall have the meaning set forth in Section 15.19.

1.1.104. "PROPOSED TRANSFER" shall have the meaning set forth in subsection 11.2.4.

1.1.105. "PUBLIC SERVICE PLAN" shall have the meaning set forth in subsection 4.2.2(t).

1.1.106. "PUBLIC WORKS DIRECTOR" shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.107. "PURCHASE MONEY NOTE" shall have the meaning set forth in subsection 4.7.2.

1.1.108. "REDEVELOPMENT WORK" shall have the meaning set forth in Section 5.1.

1.1.109. "RENEGOTIATION DATES" shall have the meaning set forth in Section 4.4.

1.1.110. "RENOVATION FUND" shall have the meaning set forth in Section 5.15.

1.1.111. "RENOVATION PLAN" shall have the meaning set forth in Section 5.15.

1.1.112. "RENOVATION REQUIREMENT" shall have the meaning set forth in Section 5.15.

1.1.113. "REPLACEMENT PARCEL 147 PARKING SPACES" shall have the meaning set forth in subsection 15.20.1.

- 1.1.114. "REPLY" shall have the meaning set forth in Section 16.5.
- 1.1.115. "RESPONDING PARTY" shall have the meaning set forth in the first paragraph of Article 16.
- 1.1.116. "REQUIRED COMPLETION DATE" shall have the meaning set forth in Section 5.7.
- 1.1.117. "SECTION" shall mean a Section of this Lease.
- 1.1.118. "SECURITY DEPOSIT" shall have the meaning set forth in Section 7.1.
- 1.1.119. "SHALL" and "WILL" are mandatory and the word "MAY" is permissive.
- 1.1.120. "STATE" shall mean the State of California.
- 1.1.121. "STATEMENT OF POSITION" shall have the meaning set forth in subsection 16.6.
- 1.1.122. "SUBLEASE" shall have the meaning set forth in subsection 11.1.1.
- 1.1.123. "SUBLESSEE" shall have the meaning set forth in subsection 11.1.1.
- 1.1.124. "SUBSECTION" shall mean a subsection of a Section of this Lease.
- 1.1.125. "SUBSTANTIAL COMMENCEMENT OF CONSTRUCTION" shall have the meaning set forth in subsection 5.7.1.
- 1.1.126. "TERM" shall have the meaning set forth in Section 2.1.
- 1.1.127. "TIME OF THE ESSENCE" shall have the meaning set forth in Section 15.2.
- 1.1.128. "UNINSURED LOSS" shall have the meaning set forth in Section 10.2.
- 1.1.129. "UNREASONABLE COUNTY ACT" shall have the meaning set forth in subsection 5.7.3.2.
- 1.1.130. "WRITTEN APPRAISAL EVIDENCE" shall have the meaning set forth in subsection 16.7.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein.

1.2.1. As-Is. Lessee acknowledges that (1) it is currently in possession of the Premises, (2) Lessee or its predecessors-in-interest have continuously occupied and/or managed and operated the Premises since 1966, and (3) the Improvements now existing on the Premises were constructed by Lessee or its predecessors with contractors selected by them. Except as provided in subsection 1.2.2, Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the Effective Date and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS WITH ALL FAULTS". Lessee hereby accepts the Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises and/or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements and within each space therein, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and/or any Improvements located thereon, (iv) the development potential of the Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises and/or any Improvements located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or any Improvements located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of County, City, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity ("Applicable Laws") or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act ("ADA")), (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any Improvements, (ix) the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or any Improvements located thereon.

1.2.2. Title. County represents that County owns fee title to the Premises and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County and/or any other public entity or agency having jurisdiction thereover, in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Lessee may occupy the Premises pursuant to the terms and conditions of this Lease.

2. TERM.

2.1 Term. Unless terminated sooner in accordance with the provisions of this Lease, the term of this Lease shall be for the period commencing on September 1, 1966 and expiring at 11:59 p.m. on August 31, 2065 ("Term"). Each calendar year during the Term is referred to herein as a "Lease Year."

2.2 Partial Lease Termination. Effective upon the Partial Termination Date (as defined below), this Lease shall be terminated with respect to the westerly approximately 207 feet of the Premises (excluding the Promenade) as more particularly described on Exhibit A-1 attached to this Lease (the "Partial Termination Premises"). For purposes hereof, the "Partial Termination Date" means the earlier of (a) six (6) months following the issuance of the first certificate of occupancy for any portion of the "Development Work" described in the Parcel 147 Lease; or (b) six (6) months following the "Required Completion Date" under the Parcel 147 Lease; provided, however, that if the requirement for concurrent execution of the Parcel 147 Lease and this Lease is eliminated as contemplated under the Option Agreement, and the option for the Parcel 147 Lease is not exercised prior to the expiration or termination of such option, then the Partial Termination Date shall be the third (3rd) anniversary of the Effective Date of this Lease.

On or prior to the Partial Termination Date, Lessee shall (i) at Lessee's sole cost and expense, demolish and remove from the Partial Termination Premises all then-existing above and below-ground Improvements located on the Partial Termination Premises and construct a new surface parking lot (including without limitation, any required site work, paving, striping and lighting) on the Partial Termination Premises in accordance with plans and specifications provided by the Department (the "Parking Lot Work"), and (ii) surrender possession of the Partial Termination Premises to County. County agrees to use commercially reasonable efforts to cooperate with Lessee in the grant or reservation of any utility easements over the Partial Termination Premises required for the development of the remaining portion of the Premises as long as such utility easements do not interfere with the development and use of the Partial Termination Premises. If Lessee fails to perform its obligations under this Section 2.2 within the time periods required hereunder (subject to Force Majeure, as hereinafter defined, and subject to any applicable notice and cure periods), then such failure shall constitute a default by Lessee under this Lease, and in addition to any other rights or remedies that County may have in connection with such default, County shall have the right, but not the obligation, to exercise one or both of the following remedies: (I) to delay the Partial Termination Date until any date selected by County on or prior to the date of the completion of the Parking Lot Work, or (II) to perform the Parking Lot Work on Lessee's behalf, in which case Lessee shall be obligated under this Lease to pay to County the Actual Cost incurred by County in connection with the performance of the Parking Lot Work. No termination of the Lease with respect to the Partial Termination Premises shall release or relieve Lessee from its obligations under this Section 2.2, all of which shall survive any such termination. Subject to the immediately preceding sentence, effective on the Partial Termination Date the Term of the Lease shall expire with respect to the Partial Termination Premises and Lessee shall have no further rights or interests in the Partial Termination Premises (except as otherwise expressly provided herein). Subject to the performance of Lessee's obligations under this Section 2.2, Lessee shall continue to have all of its rights under this Lease with respect to the Partial Termination Premises (including without

limitation, the right to use and occupy the Partial Termination Premises) until the Partial Termination Date.

At County's request, Lessee shall execute an amendment to this Lease and a quitclaim deed with respect to the Partial Termination Premises, to confirm the termination of the Lease with respect to the Partial Termination Premises, and County and Lessee shall execute any other documents as reasonably necessary or appropriate to effectuate the termination of this Lease with respect to the Partial Termination Premises or the other matters set forth in this Section 2.2. Notwithstanding the foregoing, the termination of the Lease with respect to the Partial Termination Premises in accordance with the terms and provisions of this Section 2.2 shall not be conditioned upon the execution of any such amendment, quitclaim deed or other documentation. There shall be no adjustment to the Annual Minimum Rent or Percentage Rent payable under this Lease upon the termination of the Lease with respect to the Partial Termination Premises.

2.3 Ownership of Improvements During Term. Until the expiration of the Term or sooner termination of this Lease and except as specifically provided herein, Lessee shall own all Improvements now existing and constructed by Lessee or its predecessors or hereafter constructed by Lessee upon the Premises, and all alterations, additions, or betterments made thereto by Lessee.

2.4 Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

2.4.1. County's Election to Receive Improvements. At the election of County, all structures, buildings, Improvements and all alterations, additions, and betterments thereto, and all other Improvements made to or upon the Premises shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in County without compensation therefor to Lessee. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to receive any and all proceeds which are attributable to the Condemnation of business installations, Improvements, structures and buildings belonging to Lessee immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 6 of this Lease, or to remove any furniture or equipment not intended to be permanently affixed to, or reasonably necessary for the operation of, the Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Premises and associated Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.4.2. Duty to Remove. No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert approved by County, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all Improvements on the Premises at the expiration of the Term. County may give written notice at any time, no later than four (4) years prior to the expiration of the Term or concurrently upon any earlier termination, of County's election to require Lessee

to remove, at the sole cost and expense of Lessee, not later than the expiration of the Term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade structures, buildings and Improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings; and if such structures are required to be removed by Lessee, then Lessee shall, upon the expiration or termination of this Lease, immediately restore, and quit, and peacefully surrender possession of, the Premises to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps. If Lessee has received written notice of County's election to require Lessee to remove Improvements hereunder, Lessee shall, no later than the date which is ninety (90) days after the date upon which Lessee received such notice from County, provide County with a letter of credit, bond or other security or deposit of funds, in form, issuer and amount satisfactory to County, to secure the discharge of Lessee's removal and restoration obligations pursuant to this subsection. The amount of the letter of credit, bond or other security or deposit shall be equal to the greatest of (i) one hundred fifty percent (150%) of the estimated cost to remove the Improvements as set forth in the report described above (the "Estimated Costs"), (ii) the Estimated Costs adjusted to reflect the percentage change in the ENR Index over the five (5) year period immediately preceding the date of Lessee's delivery of the letter of credit, bond, or other security or deposit, or (iii) the Estimated Costs adjusted to reflect the percentage change in the CPI Index over the five (5) year period immediately preceding the date of Lessee's delivery of the letter of credit, bond, or other security or deposit. If by not later than four (4) years prior to the expiration of the Term (or concurrently on any earlier termination of the Lease by County) County fails to elect to require Lessee to remove the buildings, structures and Improvements on the Premises as provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall turn over the Premises to County in good and workmanlike condition, consistent with the condition of other buildings, structures and Improvements of comparable age and construction quality.

2.4.3. County's Right to Remove Improvements. If, following an election by County to cause Lessee to remove the structures, buildings and Improvements as described in subsection 2.4.2 above, Lessee in fact fails to so remove said structures, buildings and Improvements and restore the Premises, County may sell, remove or demolish the same, in event of which sale, removal or demolition Lessee shall reimburse County for its Actual Costs incurred in connection with such sale, removal or demolition in excess of any funds received by County through the security above provided and any consideration received by County as a result of such sale, removal or demolition.

2.4.4. Duty to Remove Equipment, Etc. No later than the expiration of the Term or sooner termination of this Lease, Lessee shall in any event remove at its cost and expense such furniture, equipment and personal property as are not firmly affixed to said structures, buildings and Improvements or reasonably necessary for the orderly operation of the Premises. Should Lessee fail to so remove said furniture, equipment and personal property within said period, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest in and thereto, and County may elect to keep the same upon the Premises or to sell, remove, or demolish

the same, in event of which sale, removal, or demolition Lessee shall reimburse County for its Actual Costs incurred in connection with such sale, removal or demolition in excess of any consideration received by County as a result of said sale, removal or demolition.

2.4.5. Title to Certain Improvements Passes to County; Lessee to Maintain. As between County and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee upon the Premises shall vest in County upon construction or installation to the extent that they are not owned by a utility. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities, shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term.

3. USE OF PREMISES.

3.1 Specific Primary Use. The Premises shall be used by Lessee for the operation and management of (i) a commercial building used for retail, office, health club and yacht club purposes; (ii) boat anchorage facilities, including transient boat accommodations and liveaboards; (iii) a parking structure to (A) satisfy the parking requirements for the other Improvements located on the Premises, including the boat anchorage facilities, (B) provide 112 parking spaces to serve the boat anchorage facilities located on Parcel 20, and (C) provide 94 parking spaces as replacement public parking for public parking terminated on Parcel 147 in connection with the development of Parcel 147; and (iv) such other related and incidental uses as are specifically approved by County (collectively, the foregoing shall be referred to herein as the "Permitted Uses"). Except as specifically provided herein, the Premises shall be used for no other purpose without the prior written consent of County. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

Pacific Mariners Yacht Club and one or more other commercial tenants (the "Parcel 20 Commercial Subtenants") currently occupy the existing commercial building located on Parcel 20. Lessee agrees to offer to sublease to the Parcel 20 Commercial Subtenants a comparable amount of space in the New Commercial Building to facilitate the relocation of the Parcel 20 Commercial Subtenants to the New Commercial Building. The sublease offered to each of the Parcel 20 Commercial Subtenants shall be on market rate economic terms and conditions (but any non-economic terms and conditions, such as, but not limited to, liability and indemnification provisions, may at Lessee's option be consistent with those set forth in the Parcel 20 Commercial Subtenants' current subleases existing as of the date hereof).

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1. Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except in appropriate receptacles intended for such purposes, nor shall any portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly,